

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

In Re: CERTIFICATION PROCESS)
OF GAS SERVICE EMPLOYEES) DOCKET NO. 3438

RESPONSE OF THE ATTORNEY GENERAL
TO LEGAL ISSUES RAISED BY THE COMMISSION

The Attorney General submits the following responses to the questions posed by the Commission's legal counsel:

1. **Status of Superior Court Case No. PC2002-2329**: The case was dismissed without prejudice. See attached Stipulation and Order.
2. **Application of R.I.G.L §§ 28-27-28 and 28-27-29**: New England Gas employees, when conducting work on the premises of customers (beyond the meter) are subject to regulation by Department of Labor and Training (“DLT”). In the event that the company must perform functions beyond the meter when terminating, activating or restoring service, those functions are subject to DLT’s jurisdiction under R.I.G.L §§ 28-27-28 and 28-27-29. If testing of meters involves the performance of certain functions on the premises of a customer, then that function would be subject to DLT’s jurisdiction as well. DLT is probably in the best position to answer this question.
3. **Interplay between R.I.G.L §§ 28-27-28, 28-27-29 and R.I.G.L. § 39-2-3**: The statutes are not in conflict and merely provide concurrent jurisdiction over health, welfare and safety matters involving *certain* operations of New England Gas Company beyond the customer’s meter. Depending upon the outcome of this proceeding, there could be a conflict in the safety standards and enforcement

mechanisms that are separately promulgated by the DLT and the Commission. To the extent that DLT has regulations that are less rigorous than the standards mandated in R.I.G. L. § 39-2-3, then the certification standards adopted pursuant to § 39-2-3 would take precedence as far as the utility is concerned. DLT would not have an enforcement obligation concerning the Commission's new regulations given that enforcement of § 39-2-3 remains the responsibility of the Commission.

It is also worth noting that, because DLT continues to have concurrent jurisdiction over safety issues involving New England Gas beyond the customer's meter, nothing would preclude DLT from promulgating more rigorous safety standards that go beyond the statutory mandate of § 39-2-23. In such case, New England Gas could be subject to more extensive safety requirements that exceed the requirements of the Commission's certification procedures. Thus, it would be sensible for the outcome of this proceeding be in harmony with DLT's existing or anticipated regulatory scheme over the same matters, to the greatest extent possible.

4. **Impact of Judge Fortunato's decision:** The decision has no impact on the "certification" language of R.I.G. L. § 39-2-3. Enforcement of R.I.G.L §§ 28-27-28 and 28-27-29 is a matter for DLT and the Attorney General. However, both the Commission and the Division still possess plenary jurisdiction under Title 39 to investigate a utility's compliance with laws and regulations, particularly those that impact the safety and welfare of the employees and customers of a public utility. In this context, if evidence of non-compliance with state laws or regulations proves detrimental to the interests of customers, the Division could seek enforcement of laws

and regulations through the Attorney General pursuant to R.I.G.L. § 39-4-23.

Ultimately, the decision would be made by a court of competent jurisdiction.

5. **Timing of legislature's enactment of R.I.G.L. § 39-2-3:** Judge Fortunato's decision was in response to the Attorney General's request for a Temporary Restraining Order, which means that the Court found that the Attorney General would likely prevail on the merits of that case. Since the matter has been dismissed without prejudice, the decision in PC2002-2329 has no *legal* effect on the interpretation of either R.I.G.L. § 39-2-3 or the R.I.G.L. § 28-27-29.¹

Respectfully submitted,

**SHELDON WHITEHOUSE,
ATTORNEY GENERAL OF THE
STATE OF RHODE ISLAND**

By his attorney,

Paul J. Roberti
Assistant Attorney General
Department of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within document was served this 24th day of July, 2002 via first class mail, postage prepaid, upon each person designated on the official service list in this proceeding.

¹ However, one could certainly argue that Judge Fortunato's decision has a *practical* effect in terms of providing a roadmap as to the likely outcome of a hearing on the merits of the Attorney General's complaint, if such a hearing were held.

July 24, 2002

BY HAND DELIVERY

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: **Certification Process of Gas Service Employees, Docket No. 3438**

Dear Ms. Massaro:

Enclosed for filing in the above-captioned proceeding are an original and nine (9) copies of the Responses of the Attorney General to the Legal Issues raised by the Commission at the procedural conference.

Very truly yours,

Paul J. Roberti
Assistant Attorney General

Enclosures
cc: Service List

